

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5363 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

KOMAL MAHESHCHANDRA BHATT

Versus

GUJARAT UNIVERSITY

Appearance:

MR NV SOLANKI for Petitioner
MR DS NANAVATI for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/05/2000

ORAL JUDGEMENT

1. Challenge has been made by the petitioner to the notification No.589 of 1997 dated 26th June, 1997 of the respondent under which she was declared failed in her Third Year B.Sc. Examination held in May, 1996. Further prayer has been made for production of the answer book of

all the papers of Microbiology (Principal Subject) including English subject written by the petitioner during the annual examination of Third Year B.Sc. held in May, 1996 together with the original answer books and/or statement of marks obtained by her in the practical examination of such papers/subject and the petitioner further prayed that she may be allowed to see and scrutinise the same by way of ad interim relief during the pendency and final decision of the petition.

2. On 1-8-1997, notice was issued to the respondents. Thereafter on 11-9-1997, the matter was admitted and by way of interim relief, the respondents were directed to declare the result of the T.Y.B.Sc. examination of the petitioner on the basis of the marks secured by her in the subjects and mark-sheet of the result will be issued to her within a week.

3. It is alleged against the petitioner that she has adopted unfair means in the examination aforesaid. What it is stated that in the mark-sheet discrepancies were noticed in respect of the marks allotted to the petitioner i.e. tampering with the marks on the evaluation sheet than the corrected marks on the answer book. She was called upon before the Committee which looks into the unfair means committed by the students and teachers by letter dated 19th July, 1996. She appeared before the Committee and ultimately a decision has been taken to cancel the examination aforesaid. Hence, this petition.

4. Learned counsel for the petitioner contended that the petitioner has not adopted any unfair means in the examination. She is not responsible for the alleged tampering of marks in the evaluation sheet. He further contends that from reply to the special civil application, it is clear that the Committee was of the opinion that responsibility for this tampering of the marks is of the Chairman of the Examination Committee as also of two other examiners Shri Darji and Umaben Desai. On the basis of this tampering only an inference has been drawn that the petitioner got the advantage that it has been done in the process to give advantage to the petitioner. Shri Solanki submits that only on the basis of suspicion, surmises or conjectures, no such inference could have been drawn, more so, when even after tampering of the marks, the position of the petitioner remains to be only that of second class.

5. Learned counsel for the respondents, on the other hand, supported the decision of the respondents.

6. From reply to the special civil application, I find that the Coordinator of B.Sc. examination has confirmed about the irregularities and discrepancies and requested the Vice Chancellor to hold an inquiry and he was of the opinion that a deliberate attempt seems to have been made by the Chairman to benefit the candidate with Seat No.1954. Dr. P.R. Shah was the Chairman of the said examination. Dr. P.R. Shah and Dr. K.P. Singhal Coordinator were called upon before the Committee along with the petitioner. The respondents further admitted that the Committee was of the opinion that for this discrepancy between the marks as shown on the evaluation sheet and the actual marks as recorded in the answer book, the responsibility is that of the Chairman of the examination Committee as also two other Examiners. It is stated that the entire attempt of those who have corrected the marksheet and the consolidated sheet have deliberately given benefit to the petitioner. It is further found that the petitioner was favoured by the examiner or the Chairman concerned. The finding has been given that it was a gross and serious lapse and an act of dishonesty on the part of the Chairman and other examiners concerned. Those three teachers were debarred from being considered as examiners since all efforts were alleged to have been made to help the petitioner. On the basis of these findings an inference has been drawn that the petitioner is obviously guilty of adopting unfair means in the conduct of the examination.

7. From this reply, I have no hesitation to say that only on the basis of conjectures and surmises this inference has been drawn. It is a case where on the basis of suspicion, the petitioner was held to be guilty of adopting illegal means in the examination. There is no evidence whatsoever to show that the petitioner has any connection or has any relation with the Chairman and two of her examiners. How those persons have given benefit to the petitioner has not been brought on the record. In the absence of any material to link direct connection of the petitioner with the Chairman and the two examiners in the examination for her benefit it is difficult to accept and to hold guilty the petitioner for this alleged charged. To hold a student guilty of adopting unfair means in the examination what was expected, needed from the Committee was not conjectures or surmises but evidence direct or indirect in the form of circumstances which is totally lacking in the present case. I find sufficient merits in the contention of Shri Solanki that even without correction of the marks, the petitioner was passing the said examination. Similarly,

after adding of those tampered marks her position is not substantially being improved as she will still fall in the category of "Second Class". Only on the basis of this tampering with the marks, no inference could have been drawn in the absence of any evidence direct or indirect of the circumstances that Chairman, and two other Examiners have done all these things to help the petitioner. This matter is squarely covered by the decision of this court in the case of Patel Jagrutiben kalabhai vs. G.S.E.B. reported in AIR 1992 (Guj) 45.

8. The contention raised by the learned counsel for the petitioner that in the notice which was given to the petitioner she was not made known for what she has been called before the Committee is also equally full of substance and merits. The notice of the nature which has been given is certainly causing prejudice to her. She was not in a position to prepare herself to give reply to all the allegations which have been made against her during the course of inquiry. In such matters, it is expected of the respondents to make her known of the allegation of adopting unfair means by her so that she could have been in a better position to prepare her defence. Cancellation of examination of the student on the ground of adopting unfair means by him/her in the examination is certainly a serious matter and for which by calling that candidate for his/her examination, he/she has to be specifically made known of those allegations against him/her.

9. Taking into consideration the totality of the facts of this case, the order of the respondent cancelling the examination of the petitioner of Third Year B.Sc. is wholly perverse and it cannot be allowed to stand.

10. In the result, this special civil application succeeds and the same is allowed and the notification of the respondents No.589/97 dated 26-6-1997 failing the petitioner in T.Y. B.Sc. examination is quashed and set aside. Rule is made absolute. However, in the facts of this case, no order as to costs.

zgs/-